IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 9342 of 1999

For Approval and Signature:

HON'BLE MR JUSTICE KS JHAVERI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 of any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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SABARKANTHA DISTRICT PANCHAYAT - Petitioner(s)

Versus

MANGALAJIDHULAJIRATHOD - Respondent(s)

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Appearance :

MR HS MUNSHAW for Petitioner No(s).: 1.

MR SHASHIKANT S GADE for Respondent No(s).: 1.

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CORAM :HON'BLE MR JUSTICE KS JHAVERI

Date : 16/06/2005

ORAL JUDGMENT

1.0 The petitioner herein has challenged the order dated 22.03.1999 passed by the

Presiding Officer of the Labour Court, Himmatnagar in M.C.A.No.22 of 1996 in Reference (LAC) No.233 of 1988 and the order dated 24.01.1994 passed by the Presiding Officer of the Labour Court, Ahmedabad in Reference (LCA) No.233 of 1988 and to direct the Presiding Officer of the Labour Court at Himmatnagar to re-hear the matter on merits.

2.0 The petitioner Panchayat was having a Guest House and due to some administrative exigencies the respondent herein was employed in the month of May 1986 as a daily wager. It is the case of the petitioner that the respondent was employed purely on temporary and ad-hoc basis to assist the regular employee working in the said Guest House. However, in the month of September 1987, the petitioner was dis-continued from service.

2.1 Feeling aggrieved by the said action, the respondent preferred a Reference before the Labour Court at Ahmedabad being Reference (LCA) No.233 of 1988. Since none appeared on behalf of the petitioner Panchayat, the Labour Court allowed the said Reference by order dated 24.01.1994. Pursuant to the above order, the petitioner preferred an application being M.C.A.No.22 of 1996 for review of the earlier order. Subsequently, a Labour Court was established at Himmatnagar. Since none appeared on behalf of the petitioner before the Labour Court at Himmatnagar, the impugned order dated 22.03.1996 came to be passed. Hence, this petition.

3.0 I have heard learned counsel for the parties and perused the documents placed on record. In the present case, the respondent had preferred the Reference in the year 1988. When the matter was taken up for hearing before the Labour Court at Ahmedabad, neither the petitioner nor his Advocate remained present before the Court. Hence, ex-parte order came to be passed against the petitioner Panchayat. The petitioner did not take any care to appear before the Court for eight years. Moreover, even after filing review application before the Labour Court at Himmatnagar, no care was taken by the respondent to ensure that their Advocate appeared in the matter before the said Court at Himmatnagar. However, since none appeared on behalf of the petitioner Panchayat, the Labour Court has rightly proceeded ex-

parte, after closing the evidence of the petitioner herein.

4.0 In my opinion, the Labour Court was justified in directing the petitioner Panchayat to reinstate the respondent in service. However, so far the direction as regards granting 100 per cent back-wages to the respondent is concerned, it is found to be improper, since the respondent was working as a daily wager only. In that view of the matter, the impugned order of the Labour Court as regards directing the petitioner Panchayat to re-instate the respondent back in service is confirmed and the direction as regards granting 100 per cent back-wages is ordered to be quashed and set aside. The petitioner Panchayat is directed to reinstate the respondent back in service with continuity of service but without any back-wages within a period of three months from today.

5.0 The impugned order of the Labour Court is accordingly modified to the aforesaid extent. . Rule is made absolute to the aforesaid extent with no order as to costs.

(K. S. JHAVERI, J.)

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